

Humboldt County Department of Health and Human Services
DIVISION OF ENVIRONMENTAL HEALTH

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NOTICE AND ORDER 08-01

Cease and Desist and Corrective Action Order

May 1, 2008

Patrick C. Thompson
P. O. Box 118
Loleta, CA 95551

**Subject: Fortuna Burn Dump, SWIS# 12-CR-0040
4498 Mill Street, Fortuna, Humboldt County
APN 202-321-13**

BACKGROUND

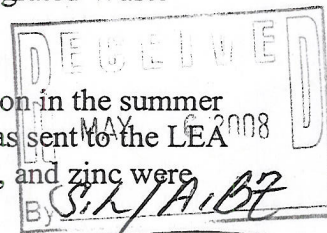
The Fortuna Burn Dump, a former solid waste burn and disposal site (1950's to 1972), then a solid waste transfer facility, ceased operation in 1987. The site was not capped, leaving the top and side slopes with exposed wastes (glass, metal, pottery, and burn ash) and abandoned.

Patrick C. Thompson is the owner of record since 1998. Mr. Thompson uses the site for storage of logging and lumber milling equipment. In addition there are inoperable vehicles, machinery parts, lumber, metal, tires, and various collections of debris throughout the 9 acre parcel. The site has been on Humboldt County Local Enforcement Agency's (LEA) solid waste site inspection inventory since 1995.

Since the time of ownership under Patrick Thompson, numerous Violations and Areas of Concern have been cited on LEA inspection reports for Site Security, Site Maintenance, Scavenging, Salvaging, and Storage of Solid wastes, Hazardous Waste Management, Litter Control, Final Cover, Grading, Erosion/Drainage Control, and Burning Garbage. Unauthorized, uncontrolled grading exposing burn ash and waste (chemical and physical hazards) resulted in Notice & Order 00-01 issued by the LEA in June 2000. A Notice of Violation and Schedule of Compliance was issued by the Humboldt County Certified Unified Program Agency (CUPA) in April 2004 for violation of California hazardous waste regulations. Evidence of excavation of waste (bottle digging) was observed in the winter 2005 and in the winter of 2007.

Because of the history of poor site management and because the site is adjacent to residential development, the LEA requested the technical assistance of the California Integrated Waste Management Board (CIWMB) in evaluating the site.

With property owner's permission, CIWMB staff performed a field investigation in the summer of 2006. They produced a Site Investigation Report (SIR), a copy of which was sent to the LEA and to the property owner. The SIR reports that elevated levels of lead, copper, and zinc were



found in soil samples, levels at which these metals are classified as California hazardous waste and require special handling. Other soil samples detected Araclor 1254 (a polychlorinated biphenyl), dioxin, and total petroleum hydrocarbons. The SIR confirms much exposed waste, steep slopes with no drainage or erosion controls and evidence of trenching, bottle collection and scavenging.

PLEASE TAKE NOTICE THAT the site is a threat to public health and safety due to the presence of both physical and chemical hazards, nonexistent erosion controls, insufficient site security and repeated past unpermitted activities at the site (uncontrolled grading, excavation of wastes by heavy equipment and by hand).

PLEASE TAKE FURTHER NOTICE THAT the site is subject to California Code of Regulations (CCR) Title 27 Division 2 Chapter 3 Subchapter 5 Article 2 pursuant to CCR T27 §21100(d).

PLEASE TAKE FURTHER NOTICE THAT the Humboldt County Department of Health & Human Services, Division of Environmental Health, acting as the Local Enforcement Agency (LEA) in Humboldt County for the CIWMB, herein provides notice to Patrick C. Thompson, property owner, that the conditions at the Fortuna Burn Dump constitute Violations of the regulations and statute shown below:

Cover is absent in several areas of the site. Cover is defined as “clean, uncontaminated soil not containing waste”. Glass, metal, batteries, waste tires, and burn ash are exposed at the ground surface. *Therefore the site does not meet the requirements of 27 CCR 21140 Final Cover.*

VIOLATION 27CCR 21140 Final Cover:

(a) The final cover shall function with minimum maintenance and provide waste containment to protect public health and safety by controlling at a minimum, vectors, fire, odor, litter and landfill gas migration. The final cover shall also be compatible with post closure land use.

(b) In proposing a final cover design meeting the requirements under section 21090, the owner or operator shall assure that the proposal meets the requirements of this section. Alternative final cover designs shall meet the performance requirements of (a) and, for MSWLF units, 40 CFR 258.60(b); shall be approved by the enforcement agency for aspects of (a).

(c) The EA may require additional thickness, quality, and type of final cover depending on, but not limited to the following:

(1) a need to control landfill gas emissions and fires;

(2) the future reuse of the site; and

(3) provide access to all areas of the site as needed for inspection of monitoring and control facilities, etc.

Several portions of the site have slopes steeper than 1:1 that are not conducive to maintaining a cover due to anticipated high run-off velocities, slope stability and soil erosion. **Therefore the site does not meet the requirements of 27 CCR 21140 Final Grading.**

VIOLATION 27 CCR 21142 Final Grading:

(a) Final grades must be designed and maintained to reduce impacts to health and safety and take into consideration any post closure land use.

The Fortuna Burn Dump has no drainage or erosion controls in place to prevent storm water intrusion into the waste and cover soil loss. **Therefore the site does not meet the requirements of 27 CCR 21150 Drainage & Erosion.**

VIOLATION 27 CCR 21150 Drainage & Erosion

(a) The drainage and erosion control system shall be designed and maintained to ensure integrity of post closure land uses, roads, and structures; to prevent public contact with waste and leachate; to ensure integrity of gas monitoring and control systems; to prevent safety hazards; and to prevent exposure of waste.

(b) In cases where the design precipitation event in table 4.1, Article 4, Subchapter 2 of Chapter 3, is not adequate for the protection of public health and safety, the EA, in consultation with the RWQCB, may require the implementation of a more stringent design.

(c) Slopes not underlain by waste shall be stabilized to prevent soil erosion. Methods used to protect slopes and control erosion shall include, but are not limited to, terracing, contour furrows, and trenches.

Evidence of a recent burn pile exists on site.

VIOLATION Public Resources Code (PRC) 49602

49602. Every person who burns by fire heat or destroys by cremation any garbage, ashes, offal, or other refuse matter in violation of this article is guilty of a misdemeanor.

PLEASE TAKE NOTICE THAT PATRICK C. THOMPSON IS HEREBY ORDERED TO CEASE AND DESIST all burning of waste immediately.

PLEASE TAKE FURTHER NOTICE THAT PATRICK C. THOMPSON IS HEREBY ORDERED TO TAKE CORRECTIVE ACTION by completing the following:

Submit a work plan prepared by a qualified Engineer or Engineering Geologist to the LEA and CIWMB that proposes completion of the first 11 recommendations found on page 13 of the January 2007 *Site Investigation Report for the Fortuna Burn Dump* prepared by the CIWMB (copy of Recommendations included as Attachment 1). Submit the work plan by July 30, 2008.

OR

Submit a clean closure feasibility and cost estimate prepared by a qualified Engineer or Engineering Geologist to the LEA and CIWMB detailing the cost and feasibility of removal and disposal of the waste versus consolidation and capping of the waste (CIWMB recommendation 12, Attachment 1). Submit clean closure feasibility and cost estimate by June 30, 2008.

PLEASE BE FURTHER NOTIFIED THAT PURSUANT TO PRC SECTIONS 45011, 45014, AND 45023, if the above actions are not complied with by the specified dates, the Humboldt County Department of Health and Human Services Division of Environmental Health, as the Local Enforcement Agency, may:

1. File a petition in Superior Court for an injunction enjoining Patrick C. Thompson from maintaining the conditions and continuing the violations listed above. Should an injunction be granted, continued violation may be punishable as contempt of court.
2. Bring an action in Superior Court to impose civil penalties in amounts not to exceed \$10,000 per day for each violation occurring after the issuance date of this notice.
3. Impose administrative civil penalties in an amount not to exceed \$5,000 per day for each day Patrick C. Thompson fails to achieve compliance with the time frames specified above.

Failure to remedy the aforementioned violations by the required dates may result in the CIWMB expending available funds to perform any cleanup, abatement, or remedial work required under the circumstances set forth in PRC sections 45000 and/or 48020 which, in the judgment of the CIWMB, is required by the magnitude of endeavor or need for prompt action to protect public health and safety or the environment. If the CIWMB expends funds to perform any cleanup, abatement, or remedial work, the CIWMB may seek cost reimbursement from the operator or owner pursuant to PRC sections 45000(d) and/or 48023. Moreover, funds so expended by the CIWMB constitute a lien upon the real property owned by any responsible party that is subject to the remedial action, pursuant to PRC Section 48023.5.

Nothing in this Notice and Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations. Notwithstanding compliance with the terms of this Notice and Order, the owner may be required to take further actions as necessary to protect the public health, safety or the environment.

The LEA shall not be liable for injuries or damages to persons or property resulting from the acts and omissions by the owner or related parties in carrying out activities pursuant to this Notice and Order, nor shall the LEA be held as a party to any contract entered into by the owner in carrying out activities pursuant to this Notice and Order.

This Notice and Order is supported by the accompanying declaration of Carolyn G. Hawkins.

This Notice and Order does not relieve the owner from complying with all other local, state, and federal requirements, nor does it preclude the LEA or the CIWMB from taking any and all other actions allowed by law.

This Notice and Order may only be amended in writing by an appropriate representative of the LEA.

PLEASE TAKE NOTICE THAT

1. Pursuant to PRC section 44307, the person named in this Notice and Order has the right to appeal this Notice and Order to the Hearing Panel.
2. Pursuant to PRC section 44310, a request for a hearing before the Hearing Panel must be filed within 15 days from the date of receipt of this Notice and Order. The fee for requesting a hearing is \$1,011.00

Dated: 5-1-08

Carolyn G. Hawkins

Carolyn G. Hawkins, Registered Environmental Health Specialist
Humboldt County Department of Health and Human Services
Division of Environmental Health

DECLARATION

This Notice and Order is issued on May 1, 2008 by the Humboldt County Department of Health and Human Services Division of Environmental Health, acting in the capacity of Local Enforcement Agency for the California Integrated Waste Management Board (CIWMB), upon information known by the undersigned to be true and correct after field inspection completed on February 14, 2008.

Executed at 100 H Street, Suite 100, Eureka, California on 5.1.08



Carolyn G. Hawkins, Registered Environmental Health Specialist
Solid Waste LEA Program Manager

Attachment 1 – CIWMB remedial recommendations page 13 and 14 SIR

Attachment 2 – Request for Hearing

Attachment 3 – Local Enforcement Agency Program Fee Schedule January 2008

C: w/o attachments Angela Basquez, CIWMB
Gina Morrison, North Coast RWQCB
Kirk Girard, Humboldt County Community Development Services Department
Jon Wilcox, CA Department of Fish & Game
Al Steer, North Coast Unified Air Quality Management District
John Desidere, Humboldt County Code Enforcement Unit
Melissa Martel, DEH Hazardous Materials Unit Supervisor